

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
BRIEF**

75-1396

B
p/s 8cc

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United States Of America,

Plaintiff-Appellee,

v.

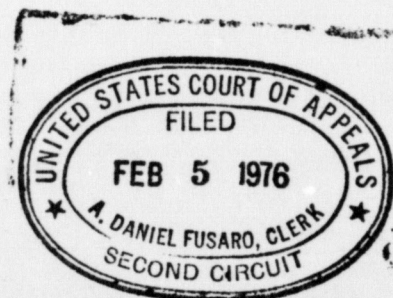
Marcus George Hero,

75-1396, 75-1397,
75-1398

Defendant-Appellant.

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Marcus G. Hero,
Defendant
987 East 21 St.
Brooklyn, N.Y. 11210



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Jan. 20, 1976

JAN 22 1976

Clerk Court of Appeals
Second Circuit
U.S. Court of Appeals
Foley Square N.Y.

U.S.A. v. Marcus G. Hero Docket #75-1396-97-98

This letter should be considered as a supplementary brief to counsel's brief submitted on my behalf with regard to the above case.

Joseph Spedale tape

It is the defendant's understanding that the government was working with the informer in the Joseph Spedale tapes prior to and during the trial.

Tape Transcript

Jurors were not listening to the Oct. 15, 1974 tape between Saks and defendant. This was evidenced by the juror's turning of transcript pages at intervals, both slow and fast, not synchronized with the playing of the tapes. Thus, concentration was on the reading with punctuation etc. and not to the voices with their respective intonations. Consequently the written document submitted by the prosecutor replaced the actual tape evidence.

Oct 31, 1974 Tape

Defendant and his counsel had no assistance in the research and preparation of the work involved in the defense of the four indictments. A request for a short delay of trial until April 1, 1975 was denied. Consequently, a government tape dated Oct. 31, 1974, between defendant and Saks which is favorable to the defendant was not played during the trial.

Perjury- Coglon

P.380 L.23 to P.385 L. 3

Coglon testified that on March 28 or 29, 1973, Glackman handed him the telephone and he spoke to someone at S.B.A. about 3 documents and that he relayed this information to Costa.

P.1044 to P.1046 L.19

Coglon testified that he was at a bank seminar from March 25 to March 31 1973

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and that the events stated in his previous testimony took place the week prior to March 26 1973. Further he now saw the 3 documents on April 2, 1973 (loan approved by S.B.A. April 3, 1973) and not on March 30, 1973.

Note: Documents and all testimony establish that S.B.A. received Smoke Watchers loan application the week of March 26, 1973. Coglon could not discuss the loan with S.B.A. until they were in receipt of the loan application. Coglon was in Tarrytown N.Y. the week of March 26 and S.B.A. did not have the documentation the prior week. Further, Costa delivered the three documents to S.B.A. March 30. (P.310 L.8) and therefore Coglon could not have seen them on April 2, 1973. Even if the events described by Coglon took place the week on March 19, (impossible) then Costa knew about the three documents prior to the defendants alleged first telephone threat and consequently Costa did not need the defendant's alleged services.

Perjury-Glackman

P. 362 L.25

Glackman asked Coglon to work on three documents.

Note: When this occurred Coglon was in Tarrytown N.Y.

Perjury-Saks:

P.660 L.10 to P.662 L.20

Saks testified that between Aug 5 to Sept. 5 1973 he had numerous telephone conversations and had several meetings with the defendant regarding the directing of minority loan applications to S.B.A. (this is also in the indictment)

Note: Defendant with entire family was in Greece during this period of time.

Mr. Wilson in summation stated (P.1548 L.9 to P.1549 L.9) that

Mr. Gotkin lead Saks to those dates. On the contrary, it was

Mr. Wilson's direct examination of Saks that made mention of these dates.

Perjury- Catale

P. 194 L.11, P.195 L.17

Defendant called Catale and wanted money
(first request)

Grand Jury minutes
Oct. 17, 1974 (Catale)
P. 20 L.19 to 25 and
P. 21 L. p to 13 GX 3506

Catale indicates that he was not aware of
Costa's third attempt to get \$350,000 for
Smoke Watchers until Costa called him and
advised him defendant was asking for a sum
of money.

Perjury- Costa

P.536 L.6 to P/537

Costa states that he told F.B.I. Special
agent Tober that defendant received part
of \$ 70,000.

P.1069 to 1075

Special agent Tobert testified that Costa
never mentioned defendant's name as a
recipient of the \$70,000.

Perjury- Saks, Bailey, Repass

P. 820 L.25 to P.821 L.18

Saks testified that defendant took the
\$ 35,000 and put it somewhere on his
person and left.

P. 955 L. 18
P. 988 L. 24
P. 1002 L. 14 to P.1003 L.20

Bailey testified that defendant left with
envelope containing the \$35,000 under his
arm and that Saks did not come back to the
table with the envelope.

P.454 L.8

Repass testified under cross examination
(pages not cited) that Saks came back to
the table with the empty envelope.

Prejudice- Wilson

P.1571 L.4 to 15
P.1378 L.8
P.1408 L.20 to P.1410 L.11

Wilson knew that the S.B.A. official who
processed the Clayton Camper loan was over
50 years of age (older than himself) and he
seriously prejudiced the jury against the
defendant by deliberately using and
emphasizing the word "young". From the juror's
expression the remark hurt the defendant
badly.

Selective Prosecution

Eight persons involved in the case were not charged despite the fact that they admit guilt. Saks who pleaded guilty was not sentenced till after the trial. There is serious question that there was complicity by the bankers Glackman, Coglon and Darrow.

* criminally

Comments

1. Trials such as these should be judged by a panel of judges and not by a jury since the jury could not possibly comprehend the case. With over 1700 pages of transcript and many exhibits the jury never made a request to examine this data. The law of Conspiracy is a complicated issue at best, and the matters concerning banking, S.B.A., TV contracts, accounting etc. also add to the problem of understanding by jury.
2. No independent witness ever corroborated the self serving statements made by the prosecution witnesses.
3. No proof or statements by the prosecution witnesses that any S.B.A. official was paid money and/or property by the defendant.

Marcus G. Hero

Marcus G. Hero, defendant
987 East 21 St.
Brooklyn N.Y. 11210

copy: George E. Wilson, U.S. Attorney
(cert. mail- return receipt requested)
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Attorney for defendant